

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34975-DDO

Chapter 7

Karen Jean Beaumont and Paul Starr Beaumont,

Debtor(s).

***NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY***

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TO: Debtor(s) and Attorney for Debtor(s); Michael J. Iannacone, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion at **9:30 am on Wednesday, October 6, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than Friday, October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Bank One Wisconsin seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on August 24, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Bank One Wisconsin holds a valid, perfected interest in a 1999 Chevy Malibu, vehicle identification number 1G1ND52M5X6275810 (the "Vehicle").

7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One Wisconsin's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of May through August 2004 totaling \$1,601.80 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$6,959.41 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,150.00.

10. Bank One Wisconsin's interest is depreciating, while Debtor(s) are failing to make payments. Bank One Wisconsin does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Bank One Wisconsin with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One Wisconsin to relief from the stay.

12. Bank One Wisconsin requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One Wisconsin.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Bank One Wisconsin will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Case No. 04-34975-DDO

Chapter 7

Karen Jean Beaumont and Paul Starr Beaumont,

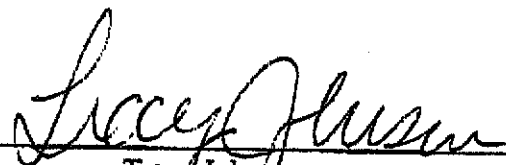
Debtor(s).

**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY**

**VERIFICATION**

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated: 9/10/04



Tracy Johnson  
Bankruptcy Specialist  
Bank One Wisconsin

BANK ONE ARIZONA

Fax: 602-674-7194

Sep 3 2004 15:17

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210024172022324

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b> No. _____ Date <b>04 SEP 1999</b>		Seller <b>MARKET CHEVROLET CO.</b> 2695 BROOKVIEW DR. ST. PAUL, MN 55119 "We" and "us" mean the Seller above, its successors and assigns.	Buyer <b>JOHN JAMES REIMER</b> 1216 FERNDALE ST N ST. PAUL, MN 55119 "You" and "your" mean the Buyer above, and your heirs, assigns and individually.
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**SALG:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle: Year **99** VIN **1GND525K6275610** Other: \_\_\_\_\_  
 Make **CHEV** U.S. Make Year **40400**  
 Model **MAIL** ☒ New ☐ Used

Description of Trade-In: **96 CHEV MUSTO**

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, substitutes, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also agree to us give us a security interest in proceeds and premium balance of any insurance and service contracts purchased with this Contract.

**PROMISE TO PAY AND PAYMENT TERMS:** You promise to pay us the principal amount of \$ **19926.14**, plus finance charges according to the amount financed at the rate of **10.99 %** per year from today's date until paid in full. Finance charges accrue on a daily basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in a

**TRUTH IN LENDING DISCLOSURES:** You also agree to pay any additional amounts according to the terms and conditions of this Contract.  
☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 (that will be paid in cash). ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

### TRUTH IN LENDING DISCLOSURES - 16

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you of on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your cash payment or down payment.
10.99 %	\$ 7466.25	\$ 19926.14	\$ 27392.40	\$ 3099.18 \$ 30491.58

Payment Schedule: Your payment schedule will be		When Payments Are Due
Number of Payments	Amount of Payments	
72	390.45	MONTHLY BEGINNING 15 OCT 1999

**Security:** You are giving a security interest in the Motor Vehicle purchased.  
☐ **Late Charge:** If a payment is more than **10 DAYS** late, you will be charged **5%**. ☐ This amount may increase to as is always be the highest amount allowed by law under Minn. Stat. § 67.25.

**Prepayment:** If you pay off this Contract early, you will not have to pay a penalty.  
☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.  
**Contract Provisions:** You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment rebates and penalties.

**CREDIT INSURANCE:** Credit life, credit disability (sickness and health), and any other insurance coverage (accident and health) are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will explain it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

**Credit Life:** Insured \_\_\_\_\_  
☐ Single ☐ Joint Prem. \$ \_\_\_\_\_ Term \_\_\_\_\_  
**Credit Disability:** Insured \_\_\_\_\_  
☐ Single ☐ Joint Prem. \$ \_\_\_\_\_ Term \_\_\_\_\_

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverage we offered.

**BUYER:** I/we, Buyer \_\_\_\_\_  
**PROPERTY INSURANCE:** You must have the Property against this Contract. You may purchase or provide the insurance through any insurance company responsible to us. The applicable insurance decision may be found at \_\_\_\_\_ if you are insured from or through us you will pay \$ \_\_\_\_\_ for \_\_\_\_\_ of coverage.

This premium is calculated as follows:  
☐ \$ \_\_\_\_\_ Deductible, Collision Coverage \$ \_\_\_\_\_  
☐ \$ \_\_\_\_\_ Deductible, Comprehensive Cov. \$ \_\_\_\_\_  
☐ Fire-Theft and Combined Additional Coverage \$ \_\_\_\_\_

**Liability Insurance:** coverage for bodily injury and motor vehicle damage caused by others is not included in this Contract unless checked and indicated.  
☐ **MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover \_\_\_\_\_ as per manufacturer's recommendation.

This Contract will be in effect for \_\_\_\_\_  
**60 MONTHS 75000 MILES**

**ASSIGNMENT:** This Contract and Security Agreement is assigned to **BANK ONE ARIZONA**. This assignment is made under the terms of a separate assignment. ☐ Under the terms of its ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recitals. \_\_\_\_\_ Date **04 SEP**

MINNESOTA RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT  
 © 1999, Ford Motor Credit, Inc., All Rights Reserved. 200004

ITEMIZATION OF AMOUNT FINANCED	
Vehicle Price (incl. sales tax of \$ 788.32)	\$ 21716.32
Service Contract, Paid for (incl. tax)	\$ 1050.00
Amount to Finance less s. (if e. is negative)	\$ 22766.32
Cash Price	\$ 22766.32
Manufacturer's Rebate	\$ 2000.00
Cash Down Payment	\$ _____
Deferred Down Payment	\$ _____
a. Total Cash/Rebate Down	\$ 2000.00
b. Trade-in Allowance	\$ 5000.00
c. Lease Amount owing	\$ 5200.00
Factor for GMAC	
d. Net Trade-in (b. minus c.)	\$ 1000.00
e. Net Cash/Trade-in (a. plus d.)	\$ 3000.00
Down Payment (in addition to b. if negative)	\$ 3000.00
Unpaid Balance of Cash Price	\$ 19926.14
Paid to Public Utilities - Piling Fees	\$ 0.00
Insurance Premiums	\$ _____
Tax	\$ _____
Tot	\$ _____
Tot	\$ _____
Total Other Charges/Amounts Paid to Others	\$ 750.00
Less: Prepaid Finance Charges	\$ _____
Amount Financed	\$ 19926.14

"We may retain or receive a portion of this amount."

**NOTICE TO BUYER**  
 (1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGE 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: **John J. Reimer** Date \_\_\_\_\_  
 Signature: **John J. Reimer** Date \_\_\_\_\_  
 Seller: **Dennis Reimer** Date **04 SEP**  
 Signature: **Dennis Reimer** Date \_\_\_\_\_

BANK ONE ARIZONA

Fax:602-674-7194

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
443 MINNESOTA ST. ST. PAUL, MN 55101

CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

BEAUMONT KAREN JEAN  
BEAUMONT PAUL STARR  
1216 FERNDALE ST N  
HAPLEWOOD MN 55119

Keith C.  
Deel >>>

First Class  
U.S. Postage  
PAID  
Permit No. 171  
St. Paul, MN

DPX365

1ST SECURED PARTY

LIEN HOLDER

99	CHEV	4DHAL	G3070L585
Year	Make	Model	Trade NR
1GINDS2MSX6275810	09/04/99	NO	
MIN	Security Code	Rebills	

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

121 - 241720223934

11/10/99 K ONE W1  
HDM034 BX 37264

ILS SHORT NAME BEAUMONT

ISVILLE KY 40233-7264

99 - CHEVY - MALIBU LOU

Active

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-34975-DDO  
Chapter 7

Karen Jean Beaumont and Paul Starr Beaumont,  
  
Debtor(s).

***MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY***

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Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin holds a perfected interest in a 1999 Chevy Malibu with a vehicle identification number 1G1ND52M5X6275810 (the "Vehicle"). Payments due under the terms of the Contract for the months of May through August 2004 totaling \$1,601.80 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$6,959.41 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,150.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Bank One Wisconsin has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Bank One Wisconsin to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$6,959.41 as of the date hereof. The fair market value of the Vehicle is approximately \$5,150.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

#### CONCLUSION

For all the reasons set forth herein, Bank One Wisconsin is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100



U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Karen Jean Beaumont and Paul Starr Beaumont

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34975-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

-----  
United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
John D. Lamey  
600 Inwood Ave. N., Ste. 200  
Oakdale, MN 55128

(Trustee)  
Michael J. Iannacone  
8687 Eagle Point Blvd.  
Lake Elmo, MN 55042

(Debtor(s))  
Karen Jean Beaumont  
1216 Ferndale Street  
Maplewood, MN 55119

Paul Starr Beaumont  
1216 Ferndale Street  
Maplewood, MN 55119

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 13, 2004

Signed: /e/ Bradley J. Halberstadt  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34975-DDO  
Chapter 7

Karen Jean Beaumont and Paul Starr Beaumont,

Debtor(s).

***ORDER GRANTING  
MOTION FOR RELIEF FROM STAY***

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The above-entitled matter came before the Court for hearing on Wednesday, October 6, 2004 on the motion of Bank One Wisconsin seeking relief from the automatic stay of 11 U.S.C. §362.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Bank One Wisconsin to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Bank One Wisconsin, and Bank One Wisconsin is authorized to foreclose its interest in the subject 1999 Chevy Malibu, vehicle identification number 1G1ND52M5X6275810 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dennis D. O'Brien  
United States Bankruptcy Judge